

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SIR MICHAEL DYESS,
Plaintiff,
v.
R. VASQUEZ LOPEZ, et al.,
Defendants.

Case No. 2:23-cv-06455-MEMF (JDE)

**ORDER ACCEPTING FINDINGS AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaints, other records on file, and the Report and Recommendation (“Report”) of the United States Magistrate Judge. Further, the Court has engaged in a *de novo* review of those portions of the Report to which objections have been made.

In the First Amended Complaint, the operative pleading, Plaintiff alleges violations of the Eighth Amendment based on an incident in prison during which Plaintiff was assaulted and pepper-sprayed. (ECF No. 8.) The Magistrate Judge’s Report recommends denial of Plaintiff’s Request to Proceed In Forma Pauperis and dismissal of this action with prejudice because Plaintiff has failed, despite being afforded opportunities, to file an Amended Complaint that states a claim on which relief may be granted. (ECF No. 21.) For the following reasons, Plaintiff’s

1 objections to the Report (ECF No. 22) do not warrant a change to the Magistrate
2 Judge's findings or recommendation.

3 Plaintiff objects that his Complaint is not frivolous or malicious and does not
4 seek monetary relief against someone who is immune from such relief. (ECF No.
5 22 at 1.) The Report, however, did not recommend dismissal on those grounds.
6 The Report recommended dismissal because Plaintiff failed to state a claim on
7 which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). Specifically, the
8 Report found that Plaintiff failed to state a claim for failure to protect him from
9 violence from other inmates because Plaintiff did not allege that Defendant knew
10 that Plaintiff's cell door should not be opened or that Plaintiff was at risk of assault.
11 (ECF No. 21 at 8.) The Report also found that Plaintiff failed to state a claim for
12 excessive force because Plaintiff did not allege that Defendant pepper-sprayed him
13 maliciously and sadistically to cause harm. (*Id.* at 9.) Plaintiff does not challenge
14 these findings from the Report.

15 Plaintiff objects that the only operative pleading is the First Amended
16 Complaint. (ECF No. 22 at 1.) But the Report's findings are based on the First
17 Amended Complaint. (ECF No. 21.)

18 Plaintiff objects that the prison where he is incarcerated is not part of the
19 "pilot program" for in forma pauperis applications (ECF No. 22 at 1), in which
20 certain prisons provide prison account statements as part of those applications. But
21 the Report's findings are not based on that fact. The Report recommends dismissal
22 because Plaintiff has failed to state a claim on which relief may be granted, not
23 because of failure to provide a prison account statement through the pilot program.

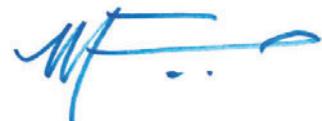
24 Plaintiff objects that his motion to proceed with this action may have been
25 removed from his letters to the Court. (ECF No. 22 at 1.) The docket reflects,
26 however, that the Court received Plaintiff's motion to proceed in forma pauperis.
27 (ECF No. 2.) Plaintiff does not specify any other motions that were left
28 unaddressed by the Court.

1 For these reasons, Plaintiff's objections to the Report are overruled.
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3 **ORDER**
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5 IT IS ORDERED that (1) the Report and Recommendation of the Magistrate
6 Judge is accepted and adopted; (2) Plaintiff's Request to Proceed In Forma Pauperis
7 is denied; and (3) Judgment shall be entered dismissing this action with prejudice.
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9 DATED: February 11, 2025
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11 MAAME EWUSI-MENSAH FRIMPONG
12 UNITED STATES DISTRICT JUDGE
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